U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18187785

Date: AUG. 31, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a security management specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree and/or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will summarily dismiss the appeal.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose

services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

In the decision denying the petition, the Director summarized the Petitioner's statements and submissions and determined that the record lacked evidence establishing that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, or that it satisfied either the second or third *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889-90.

On appeal, the Petitioner argued that the Director committed "legal errors" and applied "an inappropriate burden of proof." However, the Petitioner did not elaborate on this argument or explain what about the Director's decision demonstrated the application of a heightened standard of proof. Further, although the Petitioner submitted a new proposal regarding his business endeavor, he did not clarify how a document that was created after denial of the petition demonstrates that the eligibility requirements for this immigration benefit had been satisfied as of the date this petition was filed. *See* 8 C.F.R. § 103.2(b)(1). We further note that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In sum, the appeal does not adequately specify a legal or factual error. Because the Petitioner did not address the Director's *Dhanasar* analysis of the three prongs, any one of which is dispositive, we summarily dismiss the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v). Finally, we note that the scope of a

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

motion on this decision, should the Petitioner choose to file one, will be limited to the issue of whether we erred in concluding that the Petitioner did not address on appeal the Director's conclusions regarding *Dhanasar* three-prong analysis.

ORDER: The appeal is summarily dismissed.